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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,046	12/20/2001	James Altadonna JR.	ALTADONNA, Jr Reissue	1438
4988	7590	02/06/2006	EXAMINER	
ALFRED M. WALKER 225 OLD COUNTRY ROAD MELVILLE, NY 11747-2712			HO, UYEN T	
			ART UNIT	PAPER NUMBER

3731

DATE MAILED: 02/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,046

Applicant(s)

ALTADONNA, JAMES

Examiner

(Jackie) Tan-Uyen T. Ho

Art Unit

3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-11, 14-22 and 34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-11, 14-22 and 34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments and amendment have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 3, 4-11, 14-22, 34 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 11, 22, 34 recites the limitation "said arcuate band comprising an intra-nasal clip" under "a" limitation. There is insufficient antecedent basis for this limitation in the claim. The specification discloses an intra-nasal clip comprising arcuate band not the arcuate band comprising an intra-nasal clip.

Claims 7 and 18 recite "said intra-nasal clip comprises a plurality of intra-nasal clips". It is not clear how one clip comprising a plurality of clips.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 3, 4-11, 14-22, 34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject

matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The original specification fails to disclose an arcuate band comprising an intra-nasal clip (claims 11 and 22 and 34) and an intra-nasal clip comprising a plurality of intra-nasal clips (claim 7 and 18).

6. Claims 3, 4-11, 14-22, 34 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for an intra-nasal clip comprising an arcuate band, does not reasonably provide enablement for an arcuate band comprising an intra-nasal clip. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. The original specification fails to disclose an arcuate band comprising an intra-nasal clip (claims 11 and 22 and 34) and an intra-nasal clip comprising a plurality of intra-nasal clips (claim 7 and 18).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claim 34 is rejected under 35 U.S.C. 102(b) as being anticipated by Albu (3,463,149). Albu discloses an air filter comprising absorbent pads (13), a curve band (fig. 5 or 6), a impregnating the absorbent pads with medication/odorant (col. 2, lines

20-30), inserting ends of the band into nostrils and wrapping the band around the end of user's nose (fig. 4), the steps of pressing, ensuring and removing as claimed are inherently carried out by the action of inserting ends of the bands into nostrils and the action of disposing the device after used. The hazardous occupational environments encompass the environment in modern times with pollutions of air as disclosed by Albu in col. 1 ,lines 24-36).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 3-11, 14-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Albu '149. Albu discloses all the limitations of the claim except for a present of the steps of packaging the arcuate band in a sealed pouch and opening the pouch at the beginning of a procedure and/or dental procedures. Official Notice is taken that the concept of making multiple disposable devices and packing them in separated seal pockets would have been obvious to one of ordinary skill in the art to ensure sterile products and for easily dispensed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to pack the device or devices of Albu in separated seal pockets in order to ensure sterile products and for easily dispensed. Doing so will meet the step of packaging the intra-nasal clip in a sealed pouch and the step of opening the pouch would be inherently carried.

Although, Albu does not disclose the clip being coated with soft fabric material. Official Notice is taken that the concept of coated a metal or plastic device with cloth material would have been obvious to one ordinary skill in the art to make the metal or plastic device compatible with sensitive skin. Therefore, it would have been obvious to one having ordinary skill in the art to coat or wrap the metal or plastic portion of Albu with fabric in order for the device compatible with sensitive skin.

Regarding claims 22, Albu discloses nose air filter including all the limitations as claimed being used in industries expose workers to harmful germs. The dental procedures are considered as a harmful germs industry. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use Albu's device at the beginning of the dental procedure in order to prevent the entry of substances into a person's respiratory system. Doing so would meet all the claimed limitations since Albu's device including medication or perfume (col. 2, lines 40-45).

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to (Jackie) Tan-Uyen T. Ho whose telephone number is 571-272-4696. The examiner can normally be reached on MULTIFLEX Mon. to Sat..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ANHTUAN NGUYEN can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



(Jackie) Tan-Uyen T. Ho
Patent Examiner
Art Unit 3731

January 26, 2006